Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	**WC Docket No. 04-313**
	)	
Review of the Section 251 Unbundling	)	**CC Docket No. 01-338**
Obligations of Incumbent Local Exchange		**)**
Carriers	)	

SOUTHEAST TELEPHONE, INC., COMMENTS

Pursuant to the Federal Communication Commission's (Commission)'s August 20, 2004

Public Notice (DA 04-2967, released September 13, 2004), SouthEast Telephone, Inc. ("SouthEast") submits these comments on the future structure of the Commissions's unbundling rules. As a small carrier serving rural areas of the country, SouthEast urges the Commission to avoid adopting a A *"One Size Fits All"* set of regulations. Such a policy will not work for the rural consumers of America. Unbundling rules tailored for the metropolitan areas fail to address the concerns of the often overlooked rural consumers across the nation. Accordingly, we urge the Commission to adopt an additional transition period and special pricing mechanism for rural areas. This will provide rural CLECs the additional time they need to migrate from UNE-P to their own facilities with minimum service disruptions.

Introduction and Background. **SouthEast is headquartered in Pikeville, Kentucky, and provides local narrowband and broadband voice services as a CLEC to approximately 15,000 business and residential access lines, as well as long distance and both narrowband**

and broadband internet services. Since its inception in 1996, SouthEast has shown a commitment not only to providing outstanding telecommunications services, but also to meaningful involvement in the communities throughout the Appalachian mountain region of southeastern Kentucky it serves. SouthEast provides local exchange service using a combination of resale of BellSouth services, use of the unbundled network element platform ("UNE-P") purchased from BellSouth, and SouthEast's own facilities. The Kentucky Public Service Commission has designated SouthEast as an Eligible Telecommunications Carrier for the provision of universal service in its high-cost service area.

In the instant Order, the Commission adopted interim UNE rules to stabilize the market until final unbundling rules can be put into place. ILECs must continue providing access to unbundled mass market switching (UNE-P), enterprise market loops, and dedicated transport under the same rates, terms, and conditions that applied under their interconnection agreements as of June 15, 2004, for up to six months. At the end of the six month period and in the absence of an FCC finding of impairment, the elements would continue to be available for six more months for existing customers only but at a higher rate. Specifically, **in the absence of an FCC ruling that switching in combination with shared transport and loops (*i.e.*, UNE-P) must be provided on an unbundled basis, the ILEC will have to continue to provide switching at a rate equal to the higher of (1) the rate at which the carrier leased that combination of elements on June 15, 2004, plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after *Federal Register* publication of the FCC's Order, plus one dollar. Similarly, in the absence of an**

FCC ruling that enterprise loops and dedicated transport must be unbundled, ILECs will have to continue providing those elements at a rate equal to the higher of (1)115% of the rate the carrier paid for that element on June 15, 2004, or (2) 115% of the rate the state public utility commission establishes, if any, between June 16, 2004, and six months after *Federal Register* publication of the FCC's Order for that element.

The Order also initiates a Notice of Proposed Rulemaking to adopt permanent unbundling rules which are consistent with the D.C. Circuit's USTA II decision overturning the FCC's Triennial Review Order (TRO). **Among other things, the FCC is seeking comment** on how to define the relevant markets (*e.g.*, product markets, geographic markets, customer classes) in order to develop rules that account for market variability, **and** whether any additional transition mechanisms would help prevent service disruptions during cut-overs from UNE facilities to a carrier's own (or third party) facilities, or for conversions to tariffed or other service arrangements.

Rural Market Impairment. **From the beginning, the SouthEast business plan has been one of migration - entering the market on the resale side, gradually making the transition to a UNE-P provider and attempting build an adequate customer base to allow the company to migrate to a facilities- based operation. This business plan is no different from many other CLECs across the nation, nor what was envisioned by the proponents of the 1996 Telecommunications Act. However, in rural southeastern Kentucky, the sparse population has impaired SouthEast Telephone, by keeping the company from acquiring the customer base necessary to finance the *migration* from UNE-P to a facilities- based**

provider. UNE-P has been one of the most important avenues for local telephone competition in rural areas and , and represents much of the growth in CLEC line count since 1999. The rural consumers have benefitted tremendously from UNE-P competition. Due to the ubiquitous nature of UNE-P, small carriers have been able to providesuccessful in providing service anywhere within their state where they could reach an interconnection agreement with an ILEC. The advent of UNE-P has allowed small companies such as SouthEast to carve out business opportunities and bring much needed competition to the under-served rural markets. While it may be true, that facilities-based competition is beginning to emerge within the major cities nationwide where the population density supports a business plan to invest, it is quite a different story in the outlying areas where the homes and business are not situated so close together. In rural Kentucky, the rough terrain and sparsely populated areas does not make for quite so lucrative a market. As a result, the level of competition enjoyed by the metropolitan areas and the rest of the nation has not taken hold here.

In order to understand the disparity of population within the Commonwealth, one has to look no further than the 2000 Census. According to the 2000 Census, Kentucky had one hundred and twenty (120) counties with a total population of 4,041769; the twenty-two counties designated as metropolitan areas had a population of 1,973,102. The remaining ninety-eight (98) counties combined had a population of 2,068,667. What is amazing about this statistic is the fact that almost half of the Commonwealth's population lives within twenty-two metropolitan counties. What is unfortunate, is the fact that over half of the population lives in the more less densely populated remaining ninety-eight (98) counties of

Kentucky and their communications needs will be dictated by regulations written for the minority of the population living in the metropolitan areas of the Commonwealth.

Loop & Transport Issues. **The fact that SouthEast's plan intends to migrate to a facilities based operation in the foreseeable future is complicated by the possibility that affordable loops and transport may no longer be available via UNE-P pricing. Services that must be obtained under Special Access tariffs are not viable alternatives to DS-1 loop and transport UNEs eliminated due to FCC action. Use of services purchased from the Special Access tariff would impose substantial costs increases on SouthEast and would make serving its existing customer base uneconomic without large rate increases. In fact, channel termination charges when purchased from the ILECs Interstate Special Access tariff triples in price, from $209.60 as an UNE to $650.00 at the tariffed rate. The UNE-P v. Special Access price comparison for monthly recurring charges for DS1 Interoffice Channel - Per Mile reveals an astronomical price increase of $15.77 per mile in UNE Zone 1, $18.42 in Zone 2, and $19.30 per mile in Zone 3. If SouthEast were to purchase a thirty (30) mile circuit in Zone 3 from the ILEC, the monthly recurring charges at UNE-P pricing would be $267.58 The same thirty (30) mile circuit purchased from the ILEC Interstate Special Access Tariff would be $853.00, a astounding difference of 585.42. The price comparison for DS3 Channel Termination and Monthly Recurring charges are just as striking. For an in-depth comparison of DS1, DS3 and DS1/DS3 Multplexing, see the spreadsheet prepared for SouthEast by Technologies Management Inc.[1]**

[1] Exhibit One: UNE-P v. Special Access Pricing Comparison. Prepared by Carey Roesel of Technologies Management Inc.

Yet another dilemma faced by rural CLECs such as SouthEast is the lack of a robust competitive wholesale market. In the majority of cases, the ILEC is the only transport and loop provider in the CLEC service area. In southeastern Kentucky, there is only one alternative transport provider which provides backhaul transport to only two cities in SouthEast's fifty (50) county coverage area. The availability of alternative transport to two (2) locations in a fifty (50) county service area does not represent a competitive wholesale market, it is evidence of the necessity for the Commission to find that CLECs are impaired without unbundled access to the ILEC transport at UNE-P pricing.

Affordable access to the ILEC loop is also critical for the continued viability of rural CLECs such as SouthEast. Kentucky is divided into three (3) UNE Zones with loop pricing ranging from $9.64 in more metropolitan Zone 1, to $14.37 in Zone 2 and a staggering $30.59 cents in the predominantly rural Zone 3. Only one percent (1%) of SouthEast's customer base is located within the lower priced UNE Zone 1 as compared to twenty-one percent (21%) in Zone 2, and seventy-eight percent in Zone 3.[2] If the Commission were to conclude that CLECs are no longer impaired without access to the ILEC loop, and CLECs are forced to *negotiate* loop pricing with the larger ILECs any price increase would potentially be devastating to rural providers such as SouthEast. In fact, the best non UNE-P priced loop offer SouthEast has only been marginally close to the $30.59 rate currently available in UNE Zone 3.

[2]Exhibit Two: Loop Price Comparison by Zone.

Relevant Market Definition. **In the NPRM, published in the Federal Register on September 13, 2004, the Commission sought comment on "how best to define relevant markets to develop rules that account for market variability and to conduct the service-specific inquiry to which *USTA II* refers."[3] In making its market impairment determinations, the Commission must recognize the disparity in population density in metropolitan v. rural areas of states nationwide. The Commission must realize that unbundling rules tailored for densely populated metropolitan areas will fail to address the concerns of CLECs serving the more sparsely populated rural communities nationwide. As discussed above, Kentucky has two distinct markets: the twenty-two counties designated as metropolitan areas and the ninety-eight counties which, although they cover a much larger geographic area, have approximately the same population. These counties are typically rural in nature and have population densities well below that of the metropolitan areas.**

Significantly, no meaningful facilities-based competition has developed in these areas. Thus, for all intents and purposes the ILEC remains the monopoly facilities-based provider in these areas. Accordingly, the 98 non-metropolitan counties should be considered as the relevant geographic market for purposes of determining continued impairment for local switching in Kentucky or in the alternative, the Commission must commit the time and resources necessary to develop a market definition that recognizes the difficulties faced by CLECs serving the majority Kentucky's telecommunications

---

[3]NPRM, Federal Register, Vol. 69, No. 176./September 13, 2004. Pg. 55130. ⇦3.

consumers.

Transition Issues. **The Commission has also asked for comment on whether it should adopt any transitional mechanisms beyond those already in place. SouthEast believes that an additional transition is both necessary and appropriate for rural areas. As discussed previously, tThe Commission must take into consideration that while competition in the metropolitan areas may justify a finding of non-impairment for mass market switching, no such competition can be found in rural America. SparseDense populations with households spread across miles of harshsparse terrain has not allowed the rural CLECs to amass the customer concentrationbase required to justify the purchase of the equipment necessary to migrate to facilities based operations to compete with the ILECs on a more equal footing. An additional transition period is needed, in fact is required, to allow rural CLECs such as SouthEast to reach their potential and to allow competition to flourish in the rural communities as it has in the metropolitan areas nationwide. SouthEast estimates that an additional 18 months is needed not only to allow the company to continue to build the customer base necessary to sustain its own facilities-based operations, but also to allow next generation technology to become more stable and robust. Reaching carrier class quality with the ability to avoid service disruptions to customers will be critical to the survival of rural competitors such a SouthEast.**

SouthEast, therefore, requests that the Commission provide rural CLECs with an 18 month transition from UNE-P. In other words, UNE-P should continue to be available in rural areas such as the 98 rural counties in Kentucky for 18 months beyond the date the interim rules are scheduled to expire, instead of the six months currently called for during

the Transition Period. SouthEast does not object to the $1 increase over current UNE-P pricing that the Commission has proposed for the transition period. However, the transitional rate structure UNE-P should be available for both existing and new customers of rural CLECs and should last for the full 18 months. Rural CLECs will only be able to increase their customer concentrations and justify the purchase and installation of a switch if they can be assured of stable rates over the short term for both existing and new customers. Only this rate stability will allow them to simultaneously grow their customer base to the necessary concentration and purchase and install a switch.

Significantly, the Commission cannot rely on the marketplace to provide the price certainty necessary to assist rural UNE-P CLECs who are making the transition to a facilities- based carrier. With SouthEast's failed commercial agreement negotiations as a testament, incumbents have little or no interest in negotiating with carriers who have only limited customer bases.

In addition to conjunction with allowing the rural CLECs an additional transition period for mass market switching, the Commission must continue to require ILECs to provide competitors with access to unbundled high-capacity loops and dedicated transport network elements at TELRIC rates. SouthEast implores the Commission to study this issue, with rural providers in mind - the failure to do so could cause further irreparable harm to rural CLECs. After the announcement of the TRO, SouthEast was the only CLEC to request that the Kentucky Public Service Commission petition the FCC to challenge the presumption that CLECs are not impaired without access to local circuit switching to service DS1 Enterprise Customers. Due to the expedited nature of the proceedings, and the

overwhelming financial burden necessary to disprove the impairment, SouthEast lost the crucial battle to retain unbundled access to switching for Enterprise Customers. The financial burden to prove or disprove impairment as in the Enterprise Switching case is an economic barrier in and of itself when placed on the budgets of small CLECs such as SouthEast. CContinued access on an unbundled basis to these elements is essential in the rural environment due to the lack of competitive providers and cost prohibitiveness of Special Access pricing. Without unbundled access to these ILEC facilities at pricing reflective of their geographic related impairments, facilities-based rural CLECs will be unable to provide cost-effective service to their customers.

<u>Conclusion.</u> **The Telecommunications Act of 1996 was enacted "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[4] According to the most recent FCC Local Competition Report, Kentucky ranks among the nations five lowest states for CLEC share of access lines with only 8%.[5] To promote competition in Kentucky, as is the goal of the Telecommunication Act of 1996, if a there is a finding of non-impairment for mass-market switching, CLECs such as SouthEast must be allowed an additional eighteen (18) to to twenty-four (24) month transition period to acquire the necessary customer base needed to finance the migration to a facilities based operation. Furthermore, in order for**

[4] 1996 Telecommunications Act

[5] FCC Local Telephone Competition Report, June 18, 2003.

competition to flourish anywhere within the nation, the Commission must find that competitors are impaired without access to unbundled high-capacity loops and dedicated transport network elements at TELRIC rates.

Respectfully submitted,

SouthEast Telephone, Inc.

By: ______________________________

Lizabeth Thacker
SouthEast Telephone, Inc.
101 Scott Avenue,
Pikeville, KY 41502
(606)444-0124

Secretary of the Corporation

October 4, 2004

Loop Price Comparison
UNE Zones 1 - 3
(Exhibit 2)

Zone	Current Customer Base	Percentage	UNE-P Price

1	132	1%	$9.64
2	2,779	21%	$14.37
3	10,111	78%	$30.59